Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of USTelecom for Declaratory Ruling that Incumbent Local Exchange Carriers Are Non-Dominant in the Provision Of Switched Access Services	)	WC Docket No. 13-3
	)	

COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association ("CCA") hereby submits its comments in the above-captioned proceeding. CCA represents the interests of more than 100 competitive carriers, including rural, regional, and national wireless carriers that rely on high-cost universal service support.

The United States Telecom Association ("USTelecom") seeks a broad declaratory ruling from the Commission that incumbent local exchange carriers ("ILECs") no longer will be subject to dominant-carrier regulation under the Commission's rules.[1] CCA and others previously have explained that, although the communications landscape is evolving and ILECs' historical dominance is eroding, ILECs generally retain market power.[2] USTelecom (and its ILEC members) requests relief based on a limited analysis of ILEC PSTN connectivity, and wholly disregards "the inherent competitive advantages that . . . ILECs enjoy from their preexisting and

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[1] Petition For Declaratory Ruling of the United States Telecom Association, WC Docket No. 13-3, at 1 (filed Dec. 19, 2012) ("Petition").

[2] *See, e.g.*, Comments of Competitive Carriers Association, *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, Petition of the National Telecommunications Cooperative Association for Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution*, GN Docket No. 12-353, at 3, 10-11 (filed Jan. 28, 2013).

pervasive telecommunications networks . . . ."[3] Based on this disagreement in the record, the Commission should consider conducting a technology-neutral market analysis in connection with USTelecom's request, similar to its recent decision in the special access context.[4]

In any event, if the Commission disagrees with CCA's assessment and finds that competition from alternative providers is sufficiently robust to relieve ILECs from dominant-carrier regulations, CCA submits that determination would have important implications for the Commission's approach to universal service funding. In particular, finding that ILECs are no longer uniquely situated from a competitive standpoint would undercut the purported justification for maintaining the preferences accorded to ILECs under the Connect America Fund ("CAF").

The *CAF Order* confers enormous advantages on ILECs by giving them a right of first refusal for $1.8 billion of annual CAF Phase II support, and potentially for unclaimed Phase I support.[5] The premise for this stark regulatory preference for ILECs was that they supposedly are "in a unique position to deploy broadband networks rapidly and efficiently" relative to competitive carriers, given the ILECs' ubiquitous networks and historical service offerings.[6] CCA has always disputed the notion that ILECs' pervasive, pre-existing networks make them

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3 *Id*. at 10.

4 *Special Access for Price Cap Local Exchange Carriers, etc.*, WC Docket No. 05-25, Report and Order, 27 FCC Rcd 10557, ¶ 87 (2012). Furthermore, whether or not the Commission undertakes a comprehensive market analysis, it should limit its consideration solely to the three explicit requests for relief set forth in USTelecom's Petition. *See* Petition at 9-10.

5 *Connect America Fund, etc.*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶¶ 175-177 (2011) ("*CAF Order*").

6 *Id*. ¶ 177.

uniquely situated to deploy broadband in a cost effective, efficient manner.[7] But now the ILECs themselves, through the USTelecom petition, are undermining the purported basis for this skewed approach to universal service funding.

USTelecom's petition argues that "many of [the Commission's] regulatory paradigms continue to be based upon the idea that the PSTN still constitutes a monopoly platform for the delivery of voice services," but, according to USTelecom, "the evidence is clearly to the contrary."[8] USTelecom specifically argues that wireless services are competitive with, and indeed in many respects preferable to, wireline services because "mobility makes personal communications vastly more convenient and efficient for both voice services and for the many applications-based services that are being replaced for voice by consumers."[9] In USTelecom's words, any notion that ILECs do not directly compete with mobile wireless services "would simply contravene reality."[10] And USTelecom argues that the dramatic erosion of traditional switched access customers in favor of wireless services establishes the American public's preference for wireless services, and supports the view that wireless and wireline services now are substitutes more than complements.[11] In USTelecom's view, the changed competitive landscape, in which ILECs face widespread competition from wireless and other competitive services, justifies relieving ILECs of the unique regulatory burdens that they face.

These arguments are flatly inconsistent with the Commission's rationale for giving ILECs a right of first refusal and other preferences relating to CAF support, and, if accepted,

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7 *See, e.g.*, Comments of Competitive Carriers Association, *Connect America Fund, etc.*, WC Docket No. 10-90 (filed Dec. 21, 2012).

8 Petition at 7.

9 *Id*. at 6.

10 *Id*. at 30.

11 *See id.* at 31-32.

would make retention of those preferences wholly unreasonable. The Commission justified its deviation from competitive neutrality because the support was targeting areas "where the incumbent LEC is likely to have the only wireline facilities," and in light of the "fact that incumbent LECs' [sic] have had a long history of providing service throughout the relevant areas."[12] But the thrust of USTelecom's petition is that, in fact, there is nothing unique about the ILECs' networks in the modern telecommunications marketplace; to the contrary, USTelecom argues that ILECs' historical dominance has been completely eroded by the emergence of alternative technologies and consumer demand for wireless and IP-based services.

The ILECs cannot have it both ways. If, as USTelecom argues, ILECs face widespread competition from wireless providers, then they no longer have any basis to argue that their existing wireline networks uniquely entitle them to a regulatory right of first refusal to claim CAF support, while excluding wireless carriers from competing for those funds on equal terms. If marketplace developments justify relieving ILECs from legacy regulations like dominant carrier rules, then those same developments undercut the case for giving unique benefits to ILECs in connection with universal service support. Indeed, it would be arbitrary and capricious for the Commission to grant ILECs such a sizeable regulatory advantage—a right of first refusal to over $1.8 billion in public funds annually, even apart from the prospect of additional Phase I support—if it simultaneously relieves them of regulatory burdens based on findings that undermine the original basis for granting them that regulatory advantage.

The Commission therefore should recognize that granting USTelecom's petition would require it to revise its plan to favor ILECs in distributing CAF support and would require

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[12] *CAF Order* at ¶¶ 175, 177.

allowing wireless carriers to compete for universal service funding on the same terms and conditions as ILECs.

Respectfully submitted,

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